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FILED
Clerk
District Court

AUG 10 2009

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

MOHAMMAD FERROJ AHMED,

Plaintiff,

vs.

GREGORY BAKA, Acting Attorney General and
MELVIN GREY, Director of Immigration, in their
official and individual capacities,

Defendants.

CASE NO. **CV 09-0026**

COMPLAINT

DEMAND FOR JURY TRIAL

I. JURISDICTION

1. Plaintiff brings this action for monetary damages under 42 U.S.C. §§ 1983, 1985 and 1986 for Defendants' willful and malicious violations of and conspiracy to violate Plaintiff's First Amendment right to free speech and Plaintiff's Fifth and Fourteenth Amendment rights to due process and equal protection of laws.

2. Jurisdiction over this matter is vested in this Court pursuant to 28 U.S.C. §1343 (a)(deprivation of rights) and 28 U.S.C. §1331 (general federal question jurisdiction).

3. Venue is invoked pursuant to 28 U.S.C. §1391. Venue is properly placed in the United States District Court for the Northern Mariana Islands in that all the parties reside in the Commonwealth of the Northern Mariana Islands.

II. PARTIES

4. Plaintiff Mohammad Feroj Ahmed (Mr. "Ahmed") is an individual residing in Saipan, Commonwealth of the Northern Mariana Islands.

1 was outspoken on issues of labor abuses and human rights violations occurring in the
2 Commonwealth. Mr. Ahmed was critical of Commonwealth officials' policies with regard to
3 the recruitment and hiring of alien workers from abroad, of Commonwealth officials' lack of
4 attention to the plight of contract workers brought to the Commonwealth to work, and of
5 Commonwealth officials' failure to enact and to enforce Commonwealth laws and regulations
6 protecting the rights of alien workers.

7 15. Through his work with the United Workers Alliance, Mr. Ahmed met with various
8 United States Congressional delegations that visited the Commonwealth and discussed with
9 congressmen and their staffers the concerns of alien contract workers in the Commonwealth
10 and the Commonwealth government's failure to protect contract workers' rights.

11 16. During the same period of time, Mr. Ahmed met with various Federal officials to
12 discuss the myriad of labor and employment abuses faced by contract workers in the
13 Commonwealth and the deficiencies in the enforcement of labor and employment laws
14 intended to protect the workers' rights.

15 17. In 1999, Mr. Ahmed was interviewed by a reporter from *The New York Times* and
16 that interview of Mr. Ahmed discussing rampant illegal recruitment of foreign labor and
17 egregious labor abuses in the Commonwealth appeared in the *The New York Times Magazine*
18 later that year.

19 18. In March 2000, Mr. Ahmed accepted a position with the newly created Federal
20 Ombudsman's Office in the Commonwealth as a caseworker and translator assisting alien
21 workers with labor and employment related grievances against their Commonwealth
22 employers.

23 19. Mr. Ahmed continues to be employed with the Federal Ombudsman's Office and
24 continues to assist aggrieved guest workers with labor disputes against their present and former
25 Commonwealth employers.

26 20. For many years, the Federal Ombudsman has been critical of the policies and
27 procedures at the Commonwealth Department of Labor and the officials of both the
28

1 Department of Labor and the Division of Immigration, particularly relating to the
2 Department's handling of labor grievances of alien workers, the stereotyping of categories of
3 labor grievances as fraudulent or frivolous, and the Department's continuing denial of alien
4 workers' rights to due process.

5 21. The Federal Ombudsman, for which Mr. Ahmed works, has been critical of policies
6 practices of the Division of Immigration related to, among other things, the continued
7 recruitment practices of off-island alien labor by Commonwealth employers notwithstanding
8 the growing numbers of unemployed alien workers present in the Commonwealth pursuing
9 wage claims and other violations of law of their former Commonwealth employers.

10 22. By emergency regulation published in the *Commonwealth Register* on January 22,
11 2004, Vol. 26, No. 1 at page 21523 to 21525 and adopted with amendments on March 23,
12 2004, *Commonwealth Register* Vol. 26, No. 3 at page 22170 to 22174, the Commonwealth
13 Attorney General added a new Section 804 of the Commonwealth Immigration Regulations
14 (later codified at N.M.A.I.C § 5-40.1-715 then superceded by N.M.A.I.C. § 5-40.3-315) giving
15 the Attorney General discretion to deny the issuance of entry permits to certain foreign
16 nationals, citizens and residents from various countries and, *inter alia*, providing for waivers
17 and exceptions from blanket country exclusions.

18 23. Since its adoption in March 2004, Bangladesh has been included on the excluded
19 countries list by the Attorney General pursuant to § 804 of the Immigration Regulations.

20 24. On August 5, 2008, in the People's Republic of Bangladesh, Mr. Ahmed married
21 Azmery Sultana who is a citizen of the People's Republic of Bangladesh.

22 25. Because Bangladesh is on the excluded list of countries by the Commonwealth
23 Attorney General, on December 10, 2008, pursuant to § 804(C) of the Immigration
24 Regulations, Mr. Ahmed applied to the Acting Attorney General, Defendant Baka, for an
25 exemption for his new wife to enter the Commonwealth of the Northern Mariana Islands from
26 Bangladesh.

27 26. After waiting almost two months for a response, on February 3, 2009, Mr. Ahmed
28

1 was summarily notified by Defendant Baka that his wife would not be granted a discretionary
2 waiver under § 804(C) that would have allowed Mr. Ahmed's wife to enter the
3 Commonwealth.

4 27. The reason stated in Defendant Baka's letter to Mr. Ahmed was that "it was not
5 in the best interest of the Commonwealth that the exclusion be waived."

6 28. Defendant Baka did not attempt clarify why Azmery Sultana's request for a waiver
7 was unacceptable, how the application was somehow deficient, nor how the interests of the
8 Commonwealth would be adversely affected by her entry.

9 29. Defendant Baka did, however, attempt to justify in his letter why Bangladesh is on
10 the excluded countries list in the first place — a justification having little to do with the
11 particular facts of Azmery Sultana's waiver request or with Defendant Baka's purported
12 justification for the denial of such a waiver in her case, *i.e.*, that it would not be in the best
13 interest of the Commonwealth for Sultana to gain entry.

14 30. In his letter denying a § 804(C) waiver for Mr. Ahmed's wife, Defendant Baka
15 makes further reference to the passage by the United States Congress of Public Law 110-229
16 on May 8, 2008 (the "federal takeover" legislation) as resulting from the Commonwealth's
17 inability to manage its own immigration, and Baka somewhat insultingly and wholly
18 irrelevantly suggests that Mr. Ahmed and his wife apply to the United States Department of
19 State for a visa — a visa that would, presumably, allow Azmery Sultana to travel to the United
20 States, but not necessarily to the Commonwealth.

21 31. Comments of the Director of Immigration, Defendant Grey, to Mr. Ahmed soon
22 after the waiver denial clarified Defendant Baka's odd comments on federal takeover of
23 Commonwealth immigration in his denial letter, shedding light on the actual basis of the
24 denial of a § 804(C) waiver for Azmery Sultana — that Mr. Ahmed had been outspoken on the
25 issue of workers' rights and federal takeover legislation both personally and through his work
26 with the Federal Ombudsman's Office and that Mr. Ahmed was now being punished for his
27 participation in causing the "federal takeover" of the Commonwealth's control over its borders.
28

1 32. Defendant Grey's comments to Mr. Ahmed included: "The whole Federal
2 Ombudsman's Office worked for the federalization and now the Federal government cannot
3 address your problem?" "You are a part of that office, they wanted federal takeover and that
4 happened, so the Federal government should take care of your problem."

5 33. Echoing Defendant Baka's baseless denial of Azmery Sultana's entry based on the
6 "best interests of the Commonwealth," Defendant Grey also stated that Ms. Sultana's entry
7 was denied because "[her] presence is not a significant benefit for the CNMI. It's just a
8 personal benefit, a family reunion," or words to that effect.

9 34. Under the statutory and regulatory framework governing the entry of aliens to the
10 Commonwealth and the discretion of the Attorney General related thereto, neither Baka's nor
11 Grey's stated basis is a legitimate basis for the denial of a § 804(C) waiver.

12 35. After the denial, Mr. Ahmed appealed to Defendant Baka to reconsider his waiver
13 denial.

14 36. In support of Mr. Ahmed's request, he provided Defendants with support letters
15 from an Assistant United States Attorney, a Special Agent for the Federal Bureau of
16 Investigation and an Investigator for the United States Department of Labor, in addition to
17 presenting Defendants with certificates of appreciation given to Mr. Ahmed by the Governor
18 of the Commonwealth, the Secretary of the Commonwealth Department of Labor and the
19 Director of the Federal Bureau of Investigation for his past service to the public.

20 37. To date, Defendant Baka has failed to respond to the appeal.

21 38. Perhaps in an effort to find substantiation for the denial of a waiver where there
22 was none, but what readily appeared to be further retaliation against Mr. Ahmed in any case,
23 after Mr. Ahmed's appeal, Defendants Baka and Grey caused Assistant Attorney General
24 Kathleen Busenkell to open an investigation into the veracity of the documents Mr. Ahmed
25 submitted to prove the validity of his recent marriage to Azmery Sultana. Defendants
26 suggested, rather publicly, that Mr. Ahmed's documentation was somehow fraudulent — a
27 spurious allegation — in addition to Defendants making confusing comments to Mr. Ahmed
28

1 and possibly others about what they allege as Mr. Ahmed's "questionable attitude at Labor."

2 39. Additionally, during his employment with the Federal Ombudsman's Office, and
3 likely factors contributing to the impetus for the retaliatory conduct of the Defendants
4 described herein, Mr. Ahmed, and the Federal Ombudsman's Office for whom he worked,
5 assisted in various matters including:

- 6 a. The filing of a labor complaint by an employee of Defendant Baka's wife
7 Charlene Baka against Mrs. Baka for labor and employment abuses;
- 8 b. The filing of a labor complaint by an employee of Immigration Investigator
9 John Peter against him for labor and employment abuses;
- 10 c. The instigation of a criminal probe into the criminal activities and
11 improprieties of former Immigration Investigator Richard Lizama; and
- 12 d. The termination of Mei Lynch — the wife of Kevin Lynch, Chief Prosecutor
13 and former attorney for the Division of Immigration — by the Federal
14 Ombudsman's Office for potential criminal activity and other improprieties.

15 40. Notwithstanding the arguable illegality of § 804 of the Immigration Regulations
16 in the first place,¹ the Defendants' actions described above, denying Mr. Ahmed's wife a §
17 804(C) waiver to allow her to enter the Commonwealth to be united with Mr. Ahmed, were
18 no doubt in retaliation for, among other of Mr. Ahmed's constitutionally protected activities,
19 Mr. Ahmed's long-standing vocal criticism of the plight of the contract workers in the
20 Commonwealth, his criticism of the Commonwealth government's consistently abhorrent
21 reaction to deteriorating labor and immigration problems, and his vocal support for "federal
22 takeover."

23 41. Because of Defendants' retaliation against Mr. Ahmed, he has been denied the
24 opportunity to be united with his new wife and he has suffered immeasurable emotional
25 distress as a result.
26

27 ¹ Immigration Regulations § 804 and its successor regulation N.M.A.I.C. § 5-40.3-315
28 both appear to be at odds with the Commonwealth Entry and Deportation Act with regard to
"excludable aliens" as provided in 3 C.M.C. § 4322 and § 804 is most probably *ultra vires*.

IV. CAUSE OF ACTION FOR VIOLATIONS
OF 42 U.S.C. § 1983
(First Amendment Retaliation)

42. Mr. Ahmed repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 41 above with the same force and effect as if herein set forth.

43. Title 42 U.S.C. § 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

44. Mr. Ahmed engaged in constitutionally protected speech.

45. Defendants' actions taken against Mr. Ahmed in retaliation for Mr. Ahmed engaging in constitutionally protected speech would chill an ordinary person from engaging in such speech.

46. Defendants actions taken against Mr. Ahmed were motivated, at least in part, by Mr. Ahmed engaging in constitutionally protected speech.

47. Defendants, and each of them, acting under color of state law and/or conspiring with those acting under color of state law, have caused Mr. Ahmed to be deprived of the constitutional rights guaranteed him by the First, Fifth and Fourteenth Amendments to the United States Constitution.

48. As a result of Defendants' concerted, unlawful and malicious actions, Mr. Ahmed has been damaged by Defendants, and each of them, in an amount to be determined at trial.

V. CAUSE OF ACTION FOR CONSPIRACY
IN VIOLATION OF 42 U.S.C. § 1985(3)
(Deprivation of Rights)

49. Mr. Ahmed repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 48 above with the same force and effect as if herein set forth.

50. Title 42 U.S.C. § 1985(3) provides, in relevant part:

1 If two or more persons in any State or Territory conspire . . . for
2 the purpose of depriving, either directly or indirectly, any person
3 or class of persons of the equal protection of the laws, or of equal
4 privileges and immunities under the laws; or for the purpose of
preventing or hindering the constituted authorities of any State
or Territory from giving or securing to all persons within such
State or Territory the equal protection of the laws; . . .

5 * * *

6 if one or more persons engaged therein do, or cause to be done,
7 any act in furtherance of the object of such conspiracy, whereby
8 another is injured in his person or property, or deprived of
9 having and exercising any right or privilege of a citizen of the
United States, the party so injured or deprived may have an
action for the recovery of damages occasioned by such injury or
deprivation, against any one or more of the conspirators.

10 51. As described herein, each of the Defendants hereto entered into a plan — a
11 conspiracy — to retaliate against Mr. Ahmed for engaging in the constitutionally protected
12 speech described herein.

13 52. Defendants' purpose for their conspiracy was to retaliate against Mr. Ahmed and
14 to deprive Mr. Ahmed of due process, equal protection, and the privileges and immunities
15 guaranteed by the First, Fifth, and Fourteenth Amendments to the Constitution of the United
16 States.

17 53. All acts and omissions of Defendants alleged herein were acts and omissions of
18 Defendants acting under color of state law and/or in conspiracy with Commonwealth officials
19 acting under color of state law.

20 54. Defendants have taken a substantial number of acts in furtherance of their
21 conspiracy.

22 55. By conspiring for the purpose of retaliation against Mr. Ahmed for engaging in
23 constitutionally protected free speech, Defendants have, thereby, deprived Mr. Ahmed of his
24 rights, privileges, and immunities as guaranteed by the First, Fifth, and Fourteenth
25 Amendments to the Constitution of the United States.

26 56. As a result of Defendants' concerted, unlawful and malicious conspiracy, Mr.
27 Ahmed has been damaged by Defendants in an amount to be determined at trial.
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VI. CAUSE OF ACTION FOR
VIOLATIONS OF 42 U.S.C. § 1986

57. Mr. Ahmed repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 56 above with the same force and effect as if herein set forth.

58. Title 42 U.S.C. § 1986 provides, in relevant part:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented

59. Defendants herein, and each of them, at times relevant and material to Mr. Ahmed's claims herein, brought pursuant to 42 U.S.C. § 1985, had knowledge of the conspiracy to retaliate against Mr. Ahmed for engaging in constitutionally protected free speech in order to further deprive Mr. Ahmed of his constitutional rights and, prior to various acts taking place, had knowledge that one or more of the Defendants intended to take acts that deprived Mr. Ahmed of his constitutional rights.

60. Defendants herein, and each of them, had the power, duty and authority to prevent or to aid in the prevention of the concerted acts of the Defendants that deprived Mr. Ahmed of his constitutional rights.

61. As a result of the concerted unlawful and malicious conspiracy of Defendants, which conspiracy Defendants, and each of them, knew of the conspiracy, had the power to prevent the wrongs conspired to be done, and failed and refused to prevent the wrongs, Mr. Ahmed was deprived of due process of law and his right to equal protection, privileges and immunities of the laws and the due course of justice were impeded, all in violation of Mr. Ahmed's First, Fifth and Fourteenth Amendments rights under the United States Constitution.

62. As a result of Defendants' failure to prevent and/or aid in the prevention of Defendants' concerted, unlawful and malicious conspiracy, Mr. Ahmed has been damaged by

1 Defendants in an amount to be determined at trial.

2
3 PRAYER FOR RELIEF:

4 WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and
5 severally, for:

6 1. actual, general, special, compensatory damages in the amount to be determined at
7 trial;

8 2. punitive damages for Defendants' intentional, wanton and malicious conduct in an
9 amount to be determined at trial;

10 3. Attorneys' fees and costs pursuant to 42 U.S.C. § 1988;

11 4. Any other legal and equitable relief the Court deems just and proper.

12
13 DATED this 10th day of August, 2009.

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MARK B. HANSON

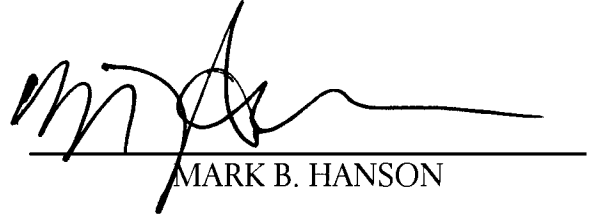
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DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 58(b), Plaintiff hereby demands a trial by jury on all of Plaintiff's causes of actions and claims for relief stated in the above-Complaint.

DATED this 10th day of August, 2009.



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